



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

January 28, 1993

Ms. Lisa A. Brown
Bracewell & Patterson
2900 South Tower Pennzoil Place
Houston, Texas 77002-2781

OR93-034

Dear Ms. Brown:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 18088.

The Cypress-Fairbanks Independent School District (the "school district"), which you represent, has received a request for information relating to a school district employee who has been suspended pending an investigation into allegations of indecency with a child. Specifically, the requestor, who is the attorney for the suspended school district employee, seeks

a copy of all information concerning Mr. Gibbons in the possession or under the control of Cypress-Fairbanks Independent School District . . . [including] all written or tape recorded statements from any person on which your recommendation to terminate Mr. Gibbons' employment is based, and any memoranda, reprimands, or directives given to Mr. Gibbons by the school district's administration during the course of his employment.

You have submitted to us for review documents responsive to the request. You claim that these documents are excepted from required public disclosure by sections 3(a)(1), 3(a)(3), 3(a)(14), and 14(e) of the Open Records Act.

Section 3(a)(3) excepts

information relating to litigation of a criminal or civil nature and settlement negotiations, to which the state or political subdivision is, or may be, a party, or to which an officer or employee of the state or political subdivision, as a consequence of his office or employment, is or may be a party, that the attorney general or the respective

attorneys of the various political subdivisions has determined should be withheld from public inspection.

Section 3(a)(3) applies only when litigation in a specific matter is pending or reasonably anticipated and only to information clearly relevant to that litigation. Open Records Decision No. 551 (1990). The litigation exception may be applied to records relating to a contested case before an administrative agency subject to the Administrative Procedure and Texas Register Act (APTRA), V.T.C.S. article 6252-13a. Open Records Decision Nos. 588 (1991); 368 (1983). Whether litigation is reasonably anticipated must be determined on a case-by-case basis. Open Records Decision No. 452 (1986) at 4.

You advise us that the school district's board of trustees discharged Mr. Gibbons pursuant to section 13.109 of the Texas Education Code. Under section 13.112 of the Texas Education Code, a teacher discharged under section 13.109 may contest his termination before a school board hearing. Mr. Gibbons has requested a hearing pursuant to section 13.112, and one has been scheduled for February 18, 1993. Should the teacher not be satisfied with the results of a hearing conducted pursuant to section 13.112, he may appeal the board's determination in a hearing before the commissioner of education. Educ. Code § 13.115. Such hearings are subject to APTRA, 19 T.A.C. §§ 157.1, 157.64, and therefore constitute "litigation" for purposes of section 3(a)(3) of the Open Records Act. Because of the likelihood of a hearing under section 13.115, we conclude that litigation may be reasonably anticipated. Furthermore, we accept your determination that the requested information relates to the anticipated litigation. Accordingly, the requested information may be withheld from required public disclosure under section 3(a)(3) of the Open Records Act. Please note that this ruling applies only until the resolution of the matter and to the documents at issue here. As we resolve this matter under section 3(a)(3), we need not address the applicability of sections 3(a)(1), 3(a)(14), and 14(e) at this time.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR93-034.

Yours very truly,



Mary R. Crouter
Assistant Attorney General
Opinion Committee

MRC/GCK/Imm

Ref.: ID# 18088

cc: Mr. Mark W. Robinett
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